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In the Supreme Court of the United States

OCTOBER TERM, 1975

VALLEY DISTRIBUTING COMPANY, PETITIONER

v.

JOE E. DAVIS AND EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION IN OPPOSITION

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Petitioner contends that the court of appeals erred in holding that a charge of discrimination under Title VII of the Civil Rights Act of 1964 was timely filed against it with the Equal Employment Opportunity Commission.

1. Prior to the 1972 Amendments to Title VII, an employee claiming to be the victim of discrimination based on race, color, sex, religion or national origin was required to file his complaint with the EEOC within 90 days of the conduct complained of, except when the charge had first been submitted to an appropriate state agency. In the latter case, the aggrieved employee could file his complaint with the EEOC within 210 days of the alleged discriminatory conduct or within 30 days of the termination of state proceedings, whichever was sooner. Section 706(d), 78 Stat. 260, 42 U.S.C. 2000e-5(d). The Equal Employment Opportunity Act of 1972, 86 Stat. 103 *et seq.*,

However, extended these periods from 90 days to 180 days when the initial filing is with the EEOC and from 210 days to 300 days when relief is first sought from a state agency. Section 4(a), 42 U.S.C. (Supp. IV) 2000e-5(e). These amendments became effective on March 24, 1972.

2. On October 31, 1971, respondent Joe E. Davis was discharged from his job with petitioner Valley Distributing Company, where he had worked since 1968. On February 22, 1972 (114 days after discharge), Davis filed a complaint with the Arizona Civil Rights Commission, alleging that his discharge was the result of religious discrimination by petitioner. The Arizona commission dismissed the complaint on the ground that the 60-day state statute of limitations (A.R.S. §41-1481, as added by Session Laws 1965, ch. 27, §3) had expired.

On March 14, 1972 (135 days after discharge), Davis filed a religious discrimination claim with the EEOC, raising the same allegations against petitioner as in the state proceeding. Pursuant to Sections 706(b) and (d) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-5(b) and (d), the EEOC referred this charge to the appropriate state authorities on March 29, 1972. Two days later, on March 31, 1972 (152 days after Davis' discharge), the Arizona Civil Rights Commission returned the complaint to the EEOC without taking any action.[1] The EEOC thereupon assumed jurisdiction of Davis' complaint and proceeded to investigate his charges. After an investigation, the EEOC found reasonable cause to believe that

[1]The state commission apparently failed to process the complaint for the same reason it had dismissed Davis' earlier charge, *i.e.*, expiration of the state statute of limitations.

the claim of religious discrimination was true and notified Davis of his right to sue. On March 19, 1973, Davis commenced this action in the United States District Court for the District of Arizona.

Petitioner moved to dismiss the Title VII portion of the complaint for lack of jurisdiction, alleging that Davis had failed to file his discrimination charge with the Arizona Civil Rights Commission within 60 days of the alleged discriminatory conduct and had also failed to file a complaint with the EEOC within 90 days of that conduct, as required by the Civil Rights Act prior to the 1972 Amendments. Treating the motion to dismiss as one for summary judgment, the district court granted the motion on June 11, 1973. Although the court stated no findings of fact or conclusions of law, its citation of *Dubois* v. *Packard Bell Corp.*, 470 F.2d 973 (C.A. 10), indicated the court's agreement with petitioner that Davis' filing of an untimely charge with the Arizona commission did not entitle him to file with the EEOC within the 210-day period allowed for complainants who first seek relief from their state agency.

The court of appeals reversed (Pet. App. A; 522 F.2d 827).[2] It concluded that Davis was entitled to the benefits of the 1972 Amendments to Title VII, effective March 24, 1972, which extended the time limit for filing charges with the EEOC from 90 to 180 days from the date of the alleged discriminatory conduct. Relying on Section 14 of the Equal Employment Opportunity Act of 1972,[3] 86 Stat. 113, the court of appeals reasoned that

[2]The EEOC intervened as a party in the court of appeals.

[3]Section 14 provides:

> The amendments made by this Act to section 706 of the Civil Rights Act of 1964 shall be applicable with respect to charges pending with the [EEOC] on the date of enactment of this Act and all charges filed thereafter.

Davis' complaint "was not formally 'filed' until EEOC assumed jurisdiction after the claim was returned by the Arizona Commission" on March 31, 1972 (522 F.2d at 831; footnote omitted), and that, on that date, Davis' claim fell safely within the then-applicable 180-day period of Section 706(e), 42 U.S.C. (Supp. IV) 2000e-5(e). A petition for rehearing was denied on September 15, 1975.

3. The decision of the court of appeals is correct and does not warrant further review. Under EEOC regulations, "unless the Commission is notified to the contrary, on the termination of State or local proceedings, * * * the Commission will consider the charge to be filed with the Commission and commence processing the case." 29 C.F.R. 1601.12(b)(1)(iii). Thus, Davis' complaint was filed with the EEOC on March 31, 1972, when the longer filing period of the 1972 Amendments was in effect, and was properly entertained by the EEOC since it challenged conduct occurring less than 180 days earlier.

Moreover, it is undisputed that Congress intended the extended limitations period provided in the 1972 Amendments to apply to charges of discrimination that would otherwise have been barred by the prior 90-day period (522 F.2d at 830-831). Hence, any charge that had been submitted to the EEOC within 180 days of an alleged discriminatory act and had not been dismissed as of March 24, 1972, was "pending" with the Commission on that date and was thus timely under Section 14 of the 1972 Amendments (see *supra*, p. 3, n. 3). Even if Davis' complaint were deemed to have been filed with the EEOC on March 14, 1972, therefore, it would have been entitled to the benefit of the extended filing period because it had not been dismissed by the Commission as of March 24, 1972.

Indeed, any other result would be anomalous and "would serve no purpose other than the creation of

an additional procedural technicality," *Love* v. *Pullman Co.*, 404 U.S. 522, 526 (footnote omitted), since if Davis had delayed filing his complaint with the EEOC until March 31, 1972, or if he had refiled his complaint with the EEOC on that day, the Commission could have assumed jurisdiction under the 180-day provisions of the 1972 Amendments. The court of appeals' conclusion that Davis' complaint was not formally filed until it was returned to the EEOC by the state agency on March 31, 1972, was therefore consistent with the congressional intent and with the broad remedial purposes of Title VII.

Nor does the decision below conflict with the Tenth Circuit's decision in *Dubois* v. *Packard Bell Corp.*, *supra*. In *Dubois*, which did not involve the 1972 Amendments to Title VII, the aggrieved employee had submitted her charge to the EEOC 144 days after the alleged discriminatory conduct. The EEOC referred the complaint to the New Mexico Human Rights Commission, which rejected it as untimely under the state's 90-day statute of limitations. After emphasizing that it was deciding only the "narrow question * * * whether the New Mexico Commission's rejection of Mrs. Dubois' complaint because it was not timely filed was a termination of proceedings *within the meaning of subsection 706(d)* so as to qualify for the extended [210-day] federal filing period" (470 F. 2d at 974; emphasis added), the Tenth Circuit held that the action of the state agency was not a "termination" within Section 706(d) and that the applicable period for filing plaintiff's charge with the EEOC was 90 days.

Thus, *Dubois* did not address the question whether the rejection of a state charge as untimely constitutes a termination of state proceedings within the meaning of 29 C.F.R. 1601.12(b)(1)(iii). More importantly, Davis' complaint was filed with the EEOC under the 180-day period authorized by the 1972 Amendments for

filing a federal charge without resort to a state agency, rather than (as in *Dubois)* under the 210-day (now 300-day) extended period authorized for charges that initially had been properly presented to state authorities. The policy considerations behind the two filing periods are different: the extended period upon which Dubois sought to rely is designed to allow state agencies the first opportunity to act upon discrimination charges—a result that the Tenth Circuit held could not be achieved if the filing with the state agency was untimely (470 F.2d at 975). On the other hand, the sole purpose behind the 1972 enlargement of the federal filing period from 90 to 180 days was to permit aggrieved employees such as Davis a greater opportunity to file discrimination complaints with the EEOC.[4]

Finally, contrary to petitioner's assertion that the impact of the decision below is "far reaching" (Pet. 18), the holding of the court of appeals relates only to charges that (1) were submitted to the EEOC (a) prior to March 24, 1972, and (b) more than 90 days after the alleged discriminatory act; (2) were transmitted by the EEOC to the appropriate state agency; and (3) were returned to the EEOC, because of untimely state filing, (a) after March 24, 1972, and (b) within 180 days of the alleged discrimination. This intricate fact situation apparently has not occurred with frequency in the past and can no longer arise.

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[4]The court below expressly declined to consider whether Davis would have been eligible to use the extended period available to those who have properly invoked their state remedies before filing with the EEOC (522 F.2d at 832).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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